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No. 80-1002

In the Supreme Court of the United States

OCTOBER TERM, 1980

THE BOARD OF EDUCATION OF THE HENDRICK HUDSON CENTRAL SCHOOL DISTRICT, WESTCHESTER COUNTY, AND THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW YORK, PETITIONERS

v.

AMY ROWLEY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

WALTER W. BARNETT
LOUISE A. LERNER
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether the district court properly determined by a preponderance of the evidence that sign-language interpreter services should be included in the "free appropriate public education" to be provided to respondent Amy Rowley under the Education of the Handicapped Act.

2. Whether an individualized education program devised for a particular handicapped child satisfies the requirements of the Education of the Handicapped Act solely by virtue of the fact that it does not conflict with any express provision of the relevant state plan submitted to the Secretary of Education under 20 U.S.C. 1413.

3. Whether the district court had jurisdiction to grant injunctive relief extending beyond the school year covered by the individualized education program for which respondents sought judicial review.

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v.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's invitation of February 23, 1981.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-24) is reported at 632 F. 2d 945. The district court's findings of fact and conclusions of law (Pet. App. C-1 to C-24) are reported at 483 F. Supp. 528. The district court's memorandum concerning petitioners' motion to dismiss for lack of jurisdiction (Pet. App. D-1 to D-7) is reported at 483 F. Supp. 536.

JURISDICTION

The judgment of the court of appeals was entered on October 1, 1980. The petition for a writ of certiorari was

filed on December 15, 1980. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

This case involves Part B of the Education of the Handicapped Act, 20 U.S.C. 1401, 1411 *et seq.*, as amended by the Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773. The principal provisions of the Act are set forth in Pet. App. I.

STATEMENT

The State of New York receives federal funds under Part B of the Education of the Handicapped Act, 20 U.S.C. 1401, 1411 *et seq.* As a statutorily-required condition of receiving these funds, New York has agreed to provide a "free appropriate public education" for all school-age handicapped children in the State and has filed with the Secretary of Education a state plan describing the way in which that obligation will be fulfilled. 20 U.S.C. 1412(1), (2)(B), 1413.[1] Under the Act, a public educational authority (usually the local school district) must prepare an annual "individualized education program" for each handicapped child within its jurisdiction. 20 U.S.C. 1414(a)(5); see also 20 U.S.C. 1401(8), (22). This program, also known as an IEP, is a written statement describing the specially designed instruction and services that the school district intends to provide to meet the unique needs of the particular handicapped child involved. See 20 U.S.C. 1401(19).

Respondent Amy Rowley is a deaf child enrolled at a public school within the Hendrick Hudson Central School District in Westchester County, New York. In December

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[1] In Section 301(a)(1) and (a)(2)(H) of the Department of Education Organization Act, 20 U.S.C. (Supp. III) 3441(a)(1) and (a)(2)(H), Congress transferred the administration of the Education of the Handicapped Act from the Commissioner of Education to the Secretary of Education.

1978, Amy's parents, also respondents in this Court, challenged the school district's failure to provide for a sign-language interpreter in the IEP prepared for Amy for the academic year 1978-1979, during which Amy was in the first grade. When the school district's Committee on the Handicapped refused to modify the IEP, the Rowleys sought and obtained administrative review under 20 U.S.C. 1415(b)(2) and (c). The school district's refusal to provide a sign-language interpreter was sustained first by an impartial hearing officer within the school district and then by the petitioner state Commissioner of Education (Pet. App. F-1 to F-25, E-1 to E-6). Respondents then brought this lawsuit in the United States District Court for the Southern District of New York, seeking judicial review of those administrative decisions in accordance with 20 U.S.C. 1415(e)(2). They contended that the school district's failure to provide a sign-language interpreter for Amy denied her the "free appropriate public education" to which she is entitled under the Act.

The district court did not hear evidence in the case until September and October 1979, when the 1979-1980 academic year had already begun and Amy had advanced to the second grade (Pet. App. B-1). At the time of trial, the required IEP had not yet been prepared for Amy for the new academic year (*id.* at D-3). Petitioner, the New York Commissioner of Education, argued that respondents' request for injunctive relief had become moot with the expiration of the 1978-1979 academic year and that the district court lacked jurisdiction to award injunctive relief for 1979-1980 or any subsequent academic year until an IEP had been prepared for that year and available avenues of administrative review had been exhausted. The district court rejected this position on the ground that the alleged inadequacy in Amy's IEP for 1978-1979 was "capable of repetition, yet evading review" and therefore "call[ed] for the invocation of a recognized exception to the mootness

doctrine" (*ibid.*). The court concluded that it retained jurisdiction over respondents' challenge to the 1978-1979 IEP and that, under 20 U.S.C. 1415(e)(2), it was "empowered to grant any 'appropriate' relief, * * * which would include injunctive relief extending beyond the school year at issue" (*ibid.*).

Turning to the merits, the district court found (Pet. App. C-2 to C-9) that respondent Amy Rowley is a deaf child with some residual hearing ability. Her residual hearing is particularly good in the lower frequencies, where vowel sounds are distinguished. She is an excellent lipreader. Amy's parents are also deaf. They have raised Amy through the use of "total communication"—a relatively new system of education for the deaf involving the simultaneous mouthing and signing of words, as well as the use of amplification, touching, and visual cues.

During the 1977-1978 academic year, when Amy was in kindergarten, the school district provided her with an FM wireless hearing aid and, in addition, conducted a two-week experiment with a full-time sign-language interpreter. At the conclusion of this trial period, the interpreter determined that Amy did not need his services for the kindergarten class. For the 1978-1979 academic year, the school district's Committee on the Handicapped recommended that Amy be provided with (a) continued use of the FM wireless hearing aid; (b) tutoring services for one class hour daily; and (c) the services of a speech therapist for three hour-long sessions each week. The Committee decided that Amy did not need the services of a sign-language interpreter.

By all accounts, Amy is a bright, well-adjusted child who interacts well with her classmates and teachers and is successful in her studies. Her achievement test scores are above the class median. The district court found (Pet. App. C-7 to C-8), however, on the basis of auditory speech discrimination tests, that, when Amy uses only her hearing aid and her

lipreading ability, she can identify only 59% of the words spoken to her, whereas when she uses the "total communication" method, including a sign-language interpreter, she can identify 100% of the words addressed to her. The court therefore determined (*id.* at C-8 to C-9) that Amy "is not learning as much, or performing as well academically, as she would without her handicap." The court accepted petitioners' evidence that "an interpreter is less necessary for the transmission of mechanical skills in the early grades than for the increasingly academic instruction of higher grades," but it found nevertheless that "anything missed in the classroom early in the learning process will have far reaching consequences" (*id.* at C-9). Finally, the district court found that "an interpreter could be integrated into the classroom in a way which will not disrupt the class or adversely affect Amy's social interaction" (*ibid.*).

Under the Education of the Handicapped Act, as interpreted by the district court, "each handicapped child [must] be given an opportunity to achieve his full potential commensurate with the opportunity provided to other children" (Pet. App. C-11). Focusing on the testimony of the principal at Amy's school to the effect that "only [Amy's] academic failure would convince the school district that she needed the services of an interpreter" (*id.* at C-12), the court ruled that petitioners applied an incorrect legal standard in determining that the services of a sign-language interpreter were not an essential part of Amy's IEP. The court stated that petitioners improperly ignored "the importance of comparing [Amy's] performance to that of non-handicapped students of similar intellectual calibre and comparable energy and initiative" (*id.* at C-13). Because of the deficiencies in Amy's understanding as revealed by the speech discrimination tests mentioned above, the court concluded that, without a sign-language interpreter, Amy falls farther short of her educational potential than do her peers.

The court referred to the testimony and affidavits of respondents' experts as additional support for the inferences drawn from the speech test results. The experts stated, largely without contradiction, that "there is a marked trend towards the use of total communication in the education of the deaf—a trend supported by studies showing the greater degree of success of students brought up in deaf households using total communication" (Pet. App. C-16). The court commented that, to the extent Amy has managed to make academic progress without the assistance of a sign-language interpreter, her success is attributable in large measure to her superior abilities and should not be permitted to obscure the critical fact that the IEP designed for her by petitioners provides her with less opportunity to reach her potential than is offered to her non-handicapped classmates. The district court therefore ordered petitioners to provide Amy with the services of a sign-language interpreter "during any school period in which academic subjects are taught" (*id.* at B-1).

A divided panel of the court of appeals affirmed in a per curiam opinion (Pet. App. A-1 to A-24). The court ruled that the district court's findings of fact were not clearly erroneous and that its conclusions of law were correct. Accordingly, the court relied primarily on the district court's detailed opinion, stressing in particular its agreement with the finding that "Amy misses a substantial part of what goes on in her classroom" and needs a sign-language interpreter in order to bring her educational opportunity up to the level of the opportunity offered to her non-handicapped classmates (*id.* at A-6). The court concluded by emphasizing that this case is not a class action and that the decision rests completely on evidence concerning "a particular child, her atypical family, her upbringing and training since birth, and her classroom experience" (*id.* at A-7). As a consequence of the court of appeals' affirmance

of the district court's order, petitioners provided Amy Rowley with the services of a sign-language interpreter for the 1980-1981 academic year.

Judge Mansfield dissented, primarily on the ground that the district court's interpretation of "free appropriate public education" was derived improperly from a regulation promulgated under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and deferred insufficiently to the views of state and local authorities regarding the content of Amy's IEP. In Judge Mansfield's opinion, Congress did not seek, in the Education of the Handicapped Act, to ensure that each handicapped child have the same opportunity to reach his potential as is afforded to non-handicapped children. Rather, Congress was concerned simply with providing "an education for each handicapped child that would enable the child to be as free as reasonably possible from dependency on others, would enable the child to become a productive member of society, and would hopefully promote academic achievement by the child that would roughly approximate that of his or her nonhandicapped classmates" (Pet. App. A-19).

DISCUSSION

1. The petition for a writ of certiorari should be denied. This case involves only the review of an IEP prepared for a particular handicapped child. The decision below turns on the factual findings of the district court, which were sustained by the court of appeals and do not warrant further review. There is no conflict among the circuits concerning the proper standard to be applied in determining whether a given IEP satisfies the statutory requirement that the handicapped child involved be provided a "free appropriate public education." On the contrary, this is the first case, to our knowledge, in which an appellate court has ruled on whether a particular instructional service is required for an

individual handicapped child in order that her education be "appropriate." The court of appeals has expressly disclaimed any precedential significance for its holding, stating that the decision "is not intended as authority beyond this case" (Pet. App. A-7). The intervention of this Court therefore is not necessary in the present situation. Further developments in the courts of appeals can be expected to provide additional guidance regarding the proper implementation of the Act with respect to individual handicapped children, and postponement of this Court's consideration of the "free appropriate public education" requirement seems desirable for this reason as well.

2. Apart from the prudential factors mentioned in the preceding paragraph, review should not be granted because the decision below appears consistent with the Education of the Handicapped Act, as construed in applicable regulations. Although the district court inaccurately stated that "[t]he Act itself does not define 'appropriate education' " (Pet. App. C-9), the fact is that the statutory definitions of the relevant terms do not explain what is meant by "appropriate," and courts called upon to review the content of an IEP, in accordance with 20 U.S.C. 1415(e), will inevitably be required to make a judgment, on the basis of the evidence presented, concerning whether the educational methods proposed by the local school district are appropriate for the handicapped child involved. See 20 U.S.C. 1401(18) ("free appropriate public education"); 20 U.S.C. 1401(16) ("special education"); 20 U.S.C. 1401(17) ("related services"); and 20 U.S.C. 1401(19) ("individualized education program").

The district court in the present case recognized that for children like Amy, whose intellectual capacity is unimpaired, an "appropriate" education could mean an "adequate" education (*i.e.*, one that enables a handicapped student to progress from grade to grade and eventually earn a high school diploma) and that it could also mean an education that "enables the handicapped child to achieve his or

her full potential" (Pet. App. C-11). The court concluded, however, that the proper standard is one that lies between these two extremes—one that requires that the handicapped child be given the same opportunity to achieve his or her full potential that is given to his or her non-handicapped peers. The court explained (*ibid.*):

> Since some handicapped children will undoubtedly have the [intellectual] ability to do better than merely progress from grade to grade, this standard requires something more than the "adequate" education described above. On the other hand, since even the best public schools lack the resources to enable every child to achieve his full potential, the standard would not require them to go so far.

Accord, *Springdale School District No. 50* v. *Grace*, No. 80-1777 (8th Cir. Aug. 7, 1981). See also Note, *Enforcing the Right to an "Appropriate" Education: The Education for All Handicapped Children Act of 1975*, 92 Harv. L. Rev. 1103, 1125-1127 (1979).[2]

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[2]This case is not like *Battle* v. *Pennsylvania*, 629 F. 2d 269 (3d Cir. 1980), cert. denied *sub nom. Scanlon* v. *Battle*, No. 80-827 (June 22, 1981), because the court of appeals there found it unnecessary to evaluate the content of an IEP prepared for a particular handicapped student. The court in *Scanlon* reviewed, not an individual decision by a local school district with respect to a single student, but an across-the-board state policy limiting the number of days of instruction that could be provided to any student. Without addressing the specific needs of any individual handicapped child, the Third Circuit ruled that the state's inflexible policy was inconsistent with the Act's emphasis on tailoring each IEP to the "unique needs" of the affected handicapped child.

Scanlon is further distinguishable from the present case because the handicapped respondents in *Scanlon* all suffered from severe mental impairments or emotional disturbances and therefore could make only the most limited form of educational progress. Accordingly, whatever the merits of the district court's emphasis in *Scanlon* (see 80-827 Pet. App. 48a) on enabling handicapped students to achieve the maximum

There is a substantial basis for the court of appeals' conclusion that this view appears to have stronger support in the language and legislative history of the Act than the alternative standards advanced by petitioners and by Judge Mansfield in his dissenting opinion in the court of appeals.[3] In contrast to their position, the statute speaks of the provision of a "*full* educational opportunity to all handicapped children." 20 U.S.C. 1412(2)(A)(i) (emphasis added); see also, *e.g.*, 121 Cong. Rec. 19482-19483 (1975) (remarks of Sen. Randolph); *id.* at 19505 (Sens. Humphrey and Beall); *id.* at 23703-23705 (Rep. Brademas); *id.* at 25538 (Rep. Cornell); *id.* at 37025 (Rep. Perkins); *id.* at 37410 (Sen. Randolph). Of course, as the district court recognized (Pet. App. C-11), Congress did not intend to require "the best possible education that a school could provide if given access to unlimited funds." Note, *supra*, 92 Harv. L. Rev. at 1125. But, the Act does "guarantee that handicapped children are provided *equal* educational opportunity." S. Rep. No. 94-168, 94th Cong., 1st Sess. 9 (1975) (emphasis added); see also, *e.g.*, 121 Cong. Rec. 19483 (1975) (remarks of Sen. Stafford); *id.* at 19494 (Sen. Javits); *id.* at 19504 (Sen. Humphrey); *id.* at 19505 (Sen. Beall); *id.* at 23704 (Rep. Brademas); *id.* at 25540 (Rep. Grassley); *id.* at 37030, 37031 (Rep. Mink); *id.* at 37412 (Sen. Taft); *id.* at 37413 (Sen. Williams); *id.* at 37418-37419 (Sen. Cranston); *id.* at 37419-37420 (Sen. Beall). And this means equal opportunity in practice, not just as a matter of theory unrelated to the needs of particular handicapped children.

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possible degree of self-sufficiency and independence from others, that decision is not inconsistent with the district court's conclusion in the present case that the Act seeks to provide handicapped students with an opportunity to fulfill their potential equivalent to the corresponding opportunity available to their non-handicapped classmates.

[3]Petitioners argue that "[t]he Act was intended to enable the handicapped to become functioning members of society, insofar as their handicapping conditions allow" (Pet. 15). Judge Mansfield's view is set forth at Pet. App. A-19. See also page 7, *supra*.

In view of the legislative emphasis on equality of opportunity, it was reasonable for the court of appeals to conclude that Congress did not intend an interested and intellectually superior student like Amy Rowley to be provided with an education that enabled her to achieve at a level only slightly above the average for her class. Rather, it appears that one of Congress' objectives in enacting the statute was to insure that the talents of handicapped children would not be squandered but would be developed in the same way as those of their non-handicapped counterparts. This goal appears as applicable to gifted handicapped children as it does to those less intellectually able.

In light of the congressional concern with equality of educational opportunity, the district court properly looked to the regulations promulgated under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, for assistance in determining the meaning of the phrase "free appropriate public education," as it is used in the Education of the Handicapped Act and as applied to Amy Rowley. There is no reason why, as a matter of legal principle, regulations issued under one statute may not be consulted in the interpretation and application of another closely-connected statute, at least where the latter statute and the regulations promulgated under it are silent on the precise issue in question. Indeed, the regulations under the Education of the Handicapped Act that were in effect at the time of the district court's decision explicitly required that each annual state plan submitted to the Secretary of Education under 20 U.S.C. 1413 include an assurance that the program would be operated in accordance with the Secretary's Section 504 regulations.[4] See 45 C.F.R. 121a.150 (1979).[5] Accordingly,

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[4]HEW's regulations under Section 504, codified in 45 C.F.R. Part 84, have been reissued by the Department of Education and codified in 34 C.F.R. Part 104.

[5]This regulation was revoked in April 1980 and was replaced by more generally applicable regulations to the same effect. See 45 C.F.R.

the district court's reliance (Pet. App. C-9 to C-10) on 45 C.F.R. 84.33(b) in reviewing the content of Amy Rowley's IEP was entirely proper.

Once the district court's standard of review under the Act is accepted, there can be little doubt, given the court's findings of fact, that its conclusion regarding the adequacy of respondent Amy Rowley's IEP was justified. The court found that Amy is a bright, highly motivated, and energetic child with an IQ of 122, who nevertheless can identify less than 60% of what is said in the classroom. The court further found that, using only her hearing aid and her lipreading ability, Amy "is not learning as much, or performing as well academically, as she would without her handicap" (Pet. App. C-8 to C-9). Primarily on the basis of these findings concerning Amy's individual situation, the court concluded that Amy's IEP should include the services of a sign-language interpreter.[6]

In reaching this conclusion, the court also considered expert testimony regarding "the superiority of total communication as a tool of education" (Pet. App. C-15). Petitioners object (Pet. 39-40) to the court's review of such evidence on the ground that the Act requires educational decisions to be based on the "unique needs" of each handicapped child and that, therefore, generalized information regarding the education of the deaf is irrelevant, or at best only marginally relevant, to the content of a particular child's IEP. As the district court recognized (Pet. App. C-15 to C-16), however, the needs of an individual child cannot be assessed intelligently "without reference to generally

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100b.201, 100b.500 (1980). The latter regulations, in turn, have been reissued by the Department of Education and will be recodified at 34 C.F.R. 76.201 and 76.500. See 45 Fed. Reg. 77368 (1980).

[6]The court's decision did not imply any conclusion about what, if any, remedy would be appropriate if Amy, using only her hearing aid and lipreading ability, had understood a significantly higher percentage of what was said in the classroom.

accepted methods of special education for the handicapped." Children with the same kind of handicap will likely share some of the same needs, and nothing in the Act or in common sense requires school districts or courts to ignore the available general learning concerning the education of students with a particular disability.

3. Petitioner's argument (Pet. 21-33) that the complaint should have been dismissed because Amy Rowley's IEP conformed with the New York state plan submitted under 20 U.S.C. 1413 is easily answered. The free appropriate public education to which Amy Rowley is entitled consists of special education and related services that meet each of four conditions, 20 U.S.C. 1401(18), none of which is required to be addressed by the state plan. See 20 U.S.C. 1412(2) and 1413. Even if the "standards of the State educational agency" referred to in 20 U.S.C. 1401(18)(B) were set out in the State plan, and even if Amy Rowley's education met those standards, neither of which has been established on the record, the services provided to her would not be appropriate if they failed to satisfy any other provision of 20 U.S.C. 1401(18). Compliance with the state plan by itself, therefore, is not a sufficient defense to a charge that a school district has failed to provide an appropriate education to a handicapped child. Although a particular state plan may not require school districts to provide sign-language interpreters for their deaf pupils (see Pet. 26), the question remains whether such services are necessary to satisfy the requirement of "an appropriate preschool, elementary, or secondary school education" (20 U.S.C. 1401(18)(C)) or the requirement that "special education" be "specially designed * * * to meet the unique needs of a handicapped child" (20 U.S.C. 1401(16)). This is precisely the question addressed by the district court, and that court did not err in failing to dismiss the complaint on the basis of petitioners' alleged compliance with the state plan.

The Secretary of Education's approval of the New York state plan under 20 U.S.C. 1413(c) does not establish that a "free appropriate public education" for a particular student need not include the provision of a sign-language interpreter in the classroom. Although the New York plan does not specifically *require* school districts to provide interpreters, neither does it *prohibit* them from doing so (see Pet. 26). The plan simply does not address the question; it leaves to local school districts the initial decision regarding which services are appropriate to the needs of their deaf pupils. The Secretary's approval of the state plan therefore cannot properly be construed as sanctioning the refusal to provide a sign-language interpreter to Amy Rowley or to any other deaf pupil. Nor can the decision below properly be construed as "set[ting] aside" the state plan (*id.* at 22).

4. Notwithstanding petitioners' contention to the contrary (Pet. 41-48), the district court was empowered to grant injunctive relief extending beyond the academic year for which respondents sought judicial review. 20 U.S.C. 1415 (e)(2) provides in pertinent part (emphasis added):

> In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, *shall grant such relief as the court determines is appropriate.*

The district court correctly ruled that respondents had exhausted their administrative remedies with respect to Amy's 1978-1979 IEP and that, because the deficiencies in the IEP were "capable of repetition, yet evading review," the court retained jurisdiction to grant relief, despite the expiration of that school year. See *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498, 515 (1911); *Roe* v. *Wade*, 410 U.S. 113, 125 (1973); *Nebraska Press Association* v. *Stuart*, 427 U.S. 539, 546 (1976). The court did *not* hold, as

petitioners assert (Pet. 45-46), that it had jurisdiction over Amy's IEP for the 1979-1980 academic year, even though that IEP had not yet been prepared and even though respondents' administrative remedies had not yet been exhausted for that year. Rather, applying its broad remedial authority under Section 1415 (e)(2), the court ordered injunctive relief extending into the 1979-1980 school year on the ground that "Amy needs an interpreter just as much (if not more) in 1979-80 as she did in 1978-79" (Pet. App. D-3).

To hold that such relief is not "appropriate" under the circumstances presented here would render the *Southern Pacific* doctrine meaningless. Since the administrative and judicial processes together take well over nine months to complete, those processes will never be completed during the same academic year for which a challenged IEP has been prepared. Therefore, unless courts have the power to grant injunctive relief extending beyond that year, a plaintiff would be able to obtain a judicial declaration that a feature of his previous IEP violated the Act, but he would be unable to correct the problem prospectively. The error could be repeated and could still evade any review that could result in meaningful relief for the handicapped student.

Moreover, although the district court did not address the question, it in fact did have jurisdiction over Amy's 1979-1980 IEP, despite the lack of exhaustion as to that program. Failure to exhaust administrative remedies under the Act does not bar suit "when resorting to state procedures clearly would be futile." *Armstrong* v. *Kline*, 476 F. Supp. 583, 602 (E.D. Pa. 1979), remanded on other grounds *sub nom. Battle* v. *Pennsylvania*, 629 F. 2d 269 (3d Cir. 1980), cert. denied *sub nom. Scanlon* v. *Battle*, No. 80-827 (June 22, 1981). Accord, *Harris* v. *Campbell*, 472 F. Supp. 51, 54 (E.D. Va. 1979); *Loughran* v. *Flanders*, 470 F. Supp. 110,

112 (D. Conn. 1979).[7] Because the school district's refusal to provide for a sign-language interpreter as part of Amy's 1978-1979 IEP was sustained throughout the administrative review of that program, and because the school district continued to maintain in the district court that no interpreter services would be necessary in the absence of academic failure by Amy (Pet. App. C-12), exhaustion of administrative remedies with respect to the 1979-1980 program would have been futile. The district court therefore had jurisdiction over that IEP without the necessity of additional state procedures.[8]

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[7]The legislative history of the Act demonstrates that this result was contemplated by Congress. See 121 Cong. Rec. 37416 (1975) (remarks of Sen. Williams):

> [E]xhaustion of the administrative procedures established under [the Act] should not be required for any individual complainant filing a judicial action in cases where such exhaustion would be futile either as a legal or practical matter. * * *

[8]If injunctive relief extending beyond the school year were deemed not "appropriate" within the meaning of 20 U.S.C. 1415(e)(2), exhaustion would also be futile in that it would preclude consideration by the courts at a time when they could render meaningful relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

WALTER W. BARNETT
LOUISE A. LERNER
Attorneys

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